IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8287 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HATHIGADH SEVA SAHKARI MANDALI

Versus

STATE OF GUJARAT

Appearance:

MR DC SEJPAL for Petitioner

MS BR GAJJAR, ld.AGP for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 05/11/2001

ORAL JUDGEMENT

Rule. Ms.Gajjar, learned AGP waives the service of Rule on behalf of the respondents.

2. The petitioner in this petition under Article 226

of the Constitution of India has challenged the order dated 14th March 2000 at Annexure.E passed by the Dy.Secretary, Agriculture and Cooperatives Department, State of Gujarat in Revision Application No.148 of 1999 under Sec.155 of the Gujarat Cooperative Societies Act, confirming the order dated 21st June 1995 at Annexure.C passed by the District Registrar, Cooperative Societies, Amreli, while exercising the power under Sec.81 of the Gujarat Cooperative Societies Act, 19761, appointing Administrator on the ground that the petitioner Society committed persistent default and negligence in performing duties as per the provisions of the Act, Rules and the Bye-laws.

3. Learned Counsel submitted that even though the Administrator was appointed way back on 21st June 1995, the charge of the administration and management of the society has not been taken over by the Administrator for all these years. Learned Counsel further submitted that even though the petitioner challenged the said order by way of appeal before the Registrar, Cooperative Societies and thereafter by Revision Application before the State Government, the said order has not been implemented from 1995 till date inasmuch as the Administrator has not taken over the administration of the society. In other words, the society continues its affairs through elected representatives. Learned Counsel, therefore, submitted that in view of the state-of-affairs, the order appointing Administrator has become nonest, in view of the provisions of the Act.

4. No affidavit has been filed on behalf of the respondents. Under the circumstances, I have no other alternative, but to accept the statement made by the learned Counsel for the petitioner that Section 81 authorises the State Government or as the case may be the Registrar to appoint the Committee consisting of one or more members of the society, in its place, or one or more administrators who need not be members of the society to manage the affairs of the society for a period not exceeding two years as may be specified in the order, which period may, at the discretion of the Registrar, be extended from time to time, so, however, that the total period does not exceed four years in the aggregate. In view of this, it is clear that the order appointing Administrator shall remain in force to the maximum limit of four years in view of the fact that the Administrator has not taken over the management of the society after passing of the impugned order dated 21st June 1995. In my opinion, the submission of the learned Counsel for the petitioner has substance.

5. In the result, this petition is allowed. Consequently, the order dated 21st June 1995 passed by the District Registrar, Cooperative Societies confirmed in appeal as well as in revision is hereby quashed and set aside. However, it is made clear that passing of this order will not come in the way of the authorities to pass fresh orders appointing Committee consisting of one or more members of the society or one or more Administrators to manage the affairs of the society in accordance with law. Rule is made absolute, with no order as to costs.

(K.R. Vyas, J.)

Sreeram.